

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

DANIEL L BROOKS
Claimant

APPEAL NO. 16A-UI-08665-TN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

BARNES & NOBLE COLLEGE
Employer

OC: 07/10/16
Claimant: Appellant (1)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Daniel Brooks, the claimant, filed a timely appeal from a representative's decision dated August 4, 2016, reference 01, which denied unemployment insurance benefits finding the claimant was discharged from work for violation of a known company policy. After due notice was provided, a telephone hearing was held on August 26, 2016. Claimant participated. Although duly notified, there was no participation by the employer.

ISSUE:

The issue is whether the evidence in the record establishes misconduct in connection with the employment.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Daniel L. Brooks was employed by Barnes & Noble College from December 31, 1998 until June 5, 2016 when he was discharged from employment. Mr. Brooks most recently held the position of full-time general manager and was paid by salary. His immediate supervisor was Ms. Sandra Crowley, Regional Manager.

Mr. Brooks was discharged on June 5, 2016 when an audit by the company's loss control manager revealed that Mr. Brooks had taken \$2,000.00 from company funds approximately one month previously and used the company funds temporarily to pay bills related to his children's education. Although the company audit showed that \$481.00 continued to be missing from the cash in the company's safe, Mr. Brooks maintained that he had repaid the entire \$2,000.00 approximately 10 days after "borrowing" the company funds. Mr. Brooks had not informed the company that he had taken company money for his own use and had not received permission from the company to use its funds for his personal use.

Established company policy requires that the general manager or manager on duty balance cash receipts each night after the close of business and further requires managers or assistant managers to immediately notify of any cash deficiencies or overages that exceed \$50.00.

When the loss prevention manager questioned Mr. Brooks about the missing \$481.00 on June 5, 2016, Mr. Brooks admitted that he had previously taken the \$2,000.00 for his own use but maintained that he had repaid it later.

It is the claimant's belief that an assistant manager had alerted the company's loss prevention department that Mr. Brooks had taken the \$2,000.00 for his own use without authorization because the assistant manager was disgruntled about scheduling and Mr. Brooks' unwillingness to support the assistant manager's bid to become a general manager. In the months preceding Mr. Brooks' discharge there had been approximately two large cash deficiencies, however, Mr. Brooks was not warned about the matter because they were found to be due to activities of hourly employees over which Mr. Brooks had no control.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does.

Iowa Code § 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

Iowa Admin. Code r. 871-24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The claimant is not qualified to receive unemployment insurance benefits if an employer discharges the claimant for reasons constituting work connected misconduct. Iowa Code section 96.5-2-a. The employer has the burden to prove the claimant was discharged for work connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not an issue in an unemployment insurance appeal. An employer may be justified in discharging an employee but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. See Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000)

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from its employees or is an intentional and substantial disregard of the employer's interests or the employee's duties and obligations to the employer.

In the case at hand, the claimant was discharged when the company's loss prevention manager became aware on June 5, 2016 that Mr. Brooks had taken \$2,000.00 in company money for his own use. Although Mr. Brooks maintained that he had repaid the entire \$2,000.00 to the company approximately 10 days after using the company funds for his own use, the company's safe continued to be \$481.00 short that could not be explained.

Although Mr. Brooks maintains that he did not know that it was against company policy to use company funds for his own use, the claimant's testimony strains credibility. Mr. Brooks was aware that the company's receipts needed to be balanced each evening after the close of business and that company policy required that any overages or deficiencies in excess of \$50.00 be immediately reported to the company. Although Mr. Brooks was aware of these requirements and there were daily shortages well in excess of the \$50.00 limit each day for approximately one and one-half weeks while he used company money without authorization, he did not report the shortages to the company. In addition, Mr. Brooks alluded to the fact that he had not reported the shortages because the company would have been aware that he had "borrowed" the funds without the authorization of the company.

For the above-stated reasons the administrative law judge concludes that the evidence in the record establishes that Mr. Brooks intentionally violated company policy by taking the funds of Barnes and Nobles for his personal use without authorization or knowledge of the company and that the claimant intentionally misreported the cash balances for his store in violation of known company policy. The administrative law judge concludes that the claimant engaged in a deliberate act that was a material breach of Mr. Brooks' duties and obligations to the company and an intentional disregard of the standard of behavior the employer had a right to expect from Mr. Brooks as an employee of the company. Accordingly, the claimant is disqualified from the receipt of unemployment insurance benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount and meets all other eligibility requirements of Iowa law.

DECISION:

The representative's decision dated August 4, 2016, reference 01, is affirmed. The claimant was discharged for misconduct. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount and is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs